Riviera Bay Resort & Condo Management Sdn Bhd v Sri Rimba Mentari Development Sdn Bhd

HIGH COURT (MELAKA) — ORIGINATING SUMMONS NO 24-416 OF 2002
LOW HOP BING J
10 JUNE 2003

Civil Procedure *— Jurisdiction — High Court — Powers of High Court — Transfer — Transfer of proceedings from magistrate's court to sessions court — Whether High Court empowered to transfer proceedings from magistrate's court to sessions court — Whether exercise of such power subject to procedure prescribed by rules of court — Whether any such procedure prescribed by rules of court — Courts of Judicature Act 1964 Schedule para 12*

The respondent claimed arrears of rental in the sum of RM9,756 against the applicant in the magistrate's court. The applicant filed a defence, which the applicant subsequently sought to amend, to include a counterclaim and set-off in the sum of RM26,624.86. However, the application for amendment was dismissed and the applicant filed a claim for the said sum of RM26,624.86 in the sessions court. The subject matter in both summonses concerned a tenancy agreement executed between the respondent as landlord and the applicant as tenant in respect of certain premises. The applicant wrote to the learned CJ (Malaya) ('Chief Judge') for leave to transfer the magistrate's court summons to the sessions court. Pending a decision by the learned Chief Judge, the applicant filed an application in the sessions court for an order that the magistrate's court summons be transferred to and consolidated with the sessions court summons. The application was dismissed by the sessions court on the grounds that that application should have been filed in the magistrate's court. Pursuant to a direction from the learned Chief Judge, the applicant filed the present application in the High Court for an order that the magistrate's court summons be transferred to the sessions court, to be consolidated and heard together with the sessions court summons. The applicant urged the High Court to make an order of transfer and consolidation, pursuant to the instruction of the learned Chief Judge, under para 12 in the Schedule to the Courts of Judicature Act 1964 ('para 12'). The respondent objected to the application on the grounds that the High Court had no jurisdiction to make the order for transfer and consolidation sought since the two summonses were within the jurisdiction and competency of the respective subordinate courts.

Held, allowing the application:

(1) Both the decisions in *Malacca Securities Sdn Bhd v Loke Yu* [1999] 6 MLJ 112 and *Amanah Finance Malaysia Berhad v Aura Vista Sdn Bhd & Ors* [2000] 5 CLJ 229 alluded to the alternative

A remedy of an application to the learned Chief Judge under s 20 of the Courts of Judicature Act 1964, regulating the distribution of business among the judges of the High Court in accordance with such directions as may be given by the learned Chief Judge. The applicant here had indeed applied to the learned Chief Judge for an order of transfer, and has been directed to apply to the High B Court. Thus, the learned Chief Judge must have contemplated that this court had unlimited jurisdiction in this regard (see p 47A–C); *Scotch Leasing Sdn Bhd (In receivership) v Chee Pok Choy & Ors* [1997] 2 MLJ 105 followed.

C (2) The jurisdiction of the High Court in making an order of transfer and consolidation of proceedings in subordinate courts was expressly provided for in para 12. The words 'any proceedings' in para 12 were sufficiently wide to cover the power to order the transfer of the following proceedings (a) from the High Court to any subordinate court and vice versa; (b) from any sessions court to any sessions court and vice versa; and (c) from any sessions D court to any magistrate's court and vice versa. Under para 12 only the High Court had the power to transfer a civil case from a sessions court to a magistrate's court and vice versa (see p 47C–E); *Malacca Securities Sdn Bhd v Loke Yu* [1999] 6 MLJ 112 and *Kee Chai Heng v Ketua Polis Daerah Kuala Muda & Anor* [1999] E 2 MLJ 668 followed.

(3) The proviso to para 12 said that this power of transfer should be exercised in such manner as may be prescribed by any rules of court. The necessary procedural mechanism for the purposes of effecting the transfer of civil cases from a sessions court to a F magistrate's court and vice versa under the High Court's substantive power in para 12 was found in O 47 r 5(1) of the Subordinate Court's Rules 1980 ('the SCR'). Further the power of the High Court to order a consolidation coincided with the procedural rule expressed in O 47 r 5(2) of the SCR which envisaged any directions contained in the order of the High G Court. (see pp 47G–H, 48A–C).

(4) Order 4 r 1(1) of the Rules of the High Court 1980 and O 8 r 18(1) of the SCR contained equipollent provisions regulating the respective procedure in the High Court and the subordinate courts to order consolidation (see p 48C).

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(5) The two summonses in this action related to the same premises as the sole subject matter of litigation and involved common questions of law or fact between the applicant and the respondent. Further, the witnesses were substantially the same. While there were cross-actions here, the respective solicitors for the parties I were the same in these actions (see p 49B–D); *Syarikat Multi Wood (a firm) v Foosan Timber Industries Sdn Bhd & Anor* [1992] 4 CLJ 1915 distinguished.

[Bahasa Malaysia summary

Responden telah menuntut tunggakan sewa sejumlah RM9,756 ke atas pemohon di mahkamah majistret. Pemohon telah memfailkan suatu pembelaan, yang mana seterusnya pemohon telah memohon membuat pindaan supaya memasukkan tuntutan balas dan tolakan (set-off) sejumlah RM26,624.86. Walau bagaimanapun, permohonan membuat pindaan tersebut telah ditolak dan pemohon telah memfailkan tuntutan bagi jumlah RM26,624.86 tersebut di mahkamah sesyen. Perkara pokok dalam kedua-dua saman adalah berkaitan dengan suatu perjanjian penyewaan yang telah ditandatangani antara responden sebagai tuantanah dan pemohon sebagai penghuni premis berkenaan. Pemohon telah menulis kepada Hakim Besar (Malaya) ('Hakim Besar') yang bijaksana memohon kebenaran memindahkan saman dalam mahkamah majistret kepada mahkamah sesyen. Sebelum mendapatkan keputusan Hakim Besar tersebut, pemohon telah mengemukakan permohonan kepada mahkamah sesyen bagi suatu perintah supaya saman mahkamah majistret dipindahkan dan digabungkan dengan saman mahkamah sesyen. Permohonan tersebut telah ditolak oleh mahkamah sesyen di atas alasan bahawa permohonan seharusnya difailkan di mahkamah majistret berkenaan. Berlanjutan arahan daripada Hakim Besar yang bijaksana, pemohon telah mengemukakan permohonan ini di Mahkamah Tinggi bagi suatu perintah supaya saman mahkamah majistret dipindahkan ke mahkamah sesyen dan digabungkan dan di dengar bersama dengan saman mahkamah sesyen berkenaan. Pemohon meminta mahkamah membuat suatu perintah pemindahan dan gabungan, seperti diarahkan oleh Hakim Besar yang bijaksana, di bawah perenggan 12, Lampiran kepada Akta Mahkamah Kehakiman 1964 ('perenggan 12'). Responden, dalam membantah permohonan tersebut, mendakwa bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa membuat perintah pemindahan dan gabungan yang dipohon memandangkan saman-saman tersebut berada di bawah bidang kuasa dan kompetensi mahkamah rendah masing-masing.

Diputuskan, membenarkan permohonan tersebut:

(1) Kedua-dua keputusan dalam *Malacca Securities Sdn Bhd v Loke Yu* [1999] 6 MLJ 112 dan *Amanah Finance Malaysia Berhad v Aura Vista Sdn Bhd & Ors* [2000] 5 CLJ 229 merujuk kepada remedi alternatif membuat suatu permohonan kepada Hakim Besar di bawah s 20 Akta Mahkamah Kehakiman 1964, meregulasikan pengagihan tugas antara hakim-hakim Mahkamah Tinggi mengikut arahan seperti diberikan oleh Hakim Besar. Pemohon di sini memang telahpun memohon kepada Hakim Besar yang bijaksana bagi suatu perintah pemindahan, dan telah diarahkan memohon kepada Mahkamah Tinggi ini. Hakim Besar pasti telah berpendapat bahawa mahkamah ini mempunyai bidang kuasa yang tidak terbatas dalam perkara ini (lihat ms 47A–

C); *Scotch Leasing Sdn Bhd (In receivership) v Chee Pok Choy & Ors* [1997] 2 MLJ 105 diikut.

(2) Bidang kuasa Mahkamah Tinggi dalam membuat perintah pindahan dan gabungan prosiding dalam mahkamah rendah diperuntukkan secara khusus dalam perenggan 12. Perkataan-perkataan 'sebarang prosiding' di dalam perenggan 12 cukup luas meliputi kuasa mengarahkan pemindahan prosiding (a) dari suatu Mahkamah Tinggi ke suatu mahkamah rendah dan sebaliknya; (b) dari suatu mahkamah sesyen ke suatu mahkamah sesyen dan sebaliknya; dan (c) dari suatu mahkamah majistret ke suatu mahkamah majistret dan sebaliknya. Di bawah perenggan 12 hanya Mahkamah Tinggi mempunyai kuasa memindahkan suatu kes sivil dari suatu mahkamah sesyen kepada suatu mahkamah majistret dan sebaliknya (lihat ms 47C–E); *Malacca Securities Sdn Bhd v Loke Yu* [1999] 6 MLJ 112 dan *Kee Chai Heng v Ketua Polis Daerah Kuala Muda & Anor* [1999] 2 MLJ 668 diikut.

(3) Proviso kepada perenggan 12 mengatakan bahawa kuasa pemindahan ini seharusnya digunakan dalam cara sepertimana diperuntukkan di bawah kaedah mahakamah. Mekanisma prosedur yang perlu bagi membolehkan suatu pemindahan kes-kes sivil dari suatu mahkamah sesyen kepada suatu mahkamah majistret dan sebaliknya di bawah kuasa-kuasa substantif Mahkamah Tinggi di bawah perenggan 12 terkandung dalam A 47 k 5(1) Kaedah-Kaedah Mahkamah Rendah 1980 ('KMR'). Lagipun kuasa Mahkamah Tinggi mengarahkan suatu gabungan terkandung dalam kaedah prosedur yang diberikan dalam A 47 r 5(2) KMR yang membayangkan sebarang arahan yang terkandung dalam perintah Mahkamah Tinggi itu (lihat ms 47G–H, 48A–C).

(4) Aturan 4 k 1(1) of the Kaedah-Kaedah Mahkamah Tinggi 1980 dan A 8 k 18(1) KMR mengandungi peruntukan yang ekuipolen yang meregulasikan prosedur mengarahkan gabungan dalam Mahkamah Tinggi dan mahkamah rendah masing-masing (lihat ms 48C).

(5) Kedua-dua saman dalam tindakan ini merujuk kepada premis yang sama sebagai perkara utama litigasi dan melibatkan persoalan fakta dan undang-undang yang sama antara pemohon dan responden. Lagipun saksi-saksi dalam kedua-dua tuntutan lebih-kurang sama. Walaupun wujudnya tindakan balas di sini, peguambela bagi pihak-pihak adalah sama dalam tuntutan-tuntutan ini (lihat ms 49B–D); *Syarikat Multi Wood (a firm) v Foosan Timber Industries Sdn Bhd & Anor* [1992] 4 CLJ 1915 dibeza.]

Notes

For cases on the jurisdiction of the High Court, see 2(2) *Mallal's Digest* (2001 Reissue) paras 3724–3775.

Cases referred to

Amanah Finance Malaysia Berhad v Aura Vista Sdn Bhd & Ors [2000] 5 CLJ 22 (refd)
Kee Chai Heng v Ketua Polis Daerah Kuala Muda & Anor [1999] 2 MLJ 668 (folld)
Malacca Securities Sdn Bhd v Loke Yu [1999] 6 MLJ 112 (folld)
Scotch Leasing Sdn Bhd (In receivership) v Chee Pok Choy & Ors [1997] 2 MLJ 105 (folld)
Syarikat Multi Wood (a firm) v Foosan Timber Industries Sdn Bhd & Anor [1992] 4 CLJ 1915 (distd)

Legislation referred to

Courts of Judicature Act 1964 s 20, Schedule para 12
Rules of the High Court 1980 O 4 r 1(1)
Subordinate Courts Act 1948 s 66, Third Schedule para 3(2)
Subordinate Courts Rules 1980 O 8 r 18(1), O 47 r 5(1), (2)

WP Leong (*WP Leong & Partners*) for the respondent.
Sharifah Noorin Alhabshi (*Zairin Dzainal Abidin* with her) (*Taye & Co*) for the applicant.

Low Hop Bing J:

Application

This is an application by way of an originating summons in encl (1) filed by the applicant for an order that Melaka Magistrate's Court Summons No 72–1254–1999 ('magistrate's court summons') be transferred to Melaka Sessions Court 2, and be consolidated with Summons No 52–648–2001 of that sessions court ('sessions court summons') on the ground that these two summonses are closely connected, involving almost the same witnesses, and subject matter, whereby much time and costs would be saved.

Factual background

In the magistrate's court summons, the respondent on 18 June 1999 claimed a sum of RM9,756 by way of arrears of rental against the applicant who then filed a defence on 27 July 1999, which the applicant sought to amend on 13 February 2001, in order to include a counterclaim and set-off against the respondent in the sum of RM26,624.86 as at 1 August 2001 for administrative fees, water and electricity bills, charges for air conditioners, quit rent and insurance for the premises in question, known as KP–3–07 (A3), Riviera Bay Resort Condominiums, 10Km, Jalan Tanjung Kling, Melaka ('the premises'), but the application for amendment was dismissed with costs.

Subsequently, the applicant filed a claim for the said sum of RM26,624.86 against the respondent in the Sessions Court Melaka which registered it as the sessions court summons.

A The subject matter in both these summonses concern the tenancy agreement executed on 25 July 1992 between the respondent as landlord and the applicant as tenant in respect of the said premises.

On 5 December 2001, the applicant wrote to the learned CJ (Malaya) ('Chief Judge') for leave to transfer the magistrate's court summons to the
B sessions court.

On 7 December 2001 the applicant, pending the decision by the learned Chief Judge, filed an application in the sessions court for an order to transfer the magistrate's court summons to the sessions court, and to be consolidated and heard together with the sessions court summons, but that application was dismissed by the sessions court on the ground that that
C application should be filed in the magistrate's court.

Vide letter dated 18 June 2002, the applicant was informed by the special officer to the learned Chief Judge that an application for transfer of the magistrate's court summons to the sessions court should be made to the High Court.

D Hence, the instant application before me.

Jurisdiction

Mr WP Leong, learned counsel for the respondent, raised a preliminary objection on the ground that the High Court has no jurisdiction to make an
E order of transfer and consolidation sought by the applicant since the two summonses were within the respective jurisdiction and competency of the subordinate courts.

Respondent's learned counsel contended that s 66 of the Subordinate Courts Act 1948 ('SCA 1948') has no application here as there was no
F counterclaim, but instead there was a claim each arising from the magistrate's court and the sessions court. He added that para 3(2) in the Third Schedule to the SCA 1948 merely referred to the transfer of any proceedings to another court of co-ordinate jurisdiction.

In respect of the rules, it was argued for the respondent that under O 8
G r 18(1) and O 47 of the Subordinate Courts Rules 1980 ('the SCR') the powers to order a consolidation and transfer of proceedings respectively, are conferred only on the subordinate courts.

Respondent's counsel took the stand that O 4 r 1(1) of the Rules of the High Court 1980 ('the RHC') concerns consolidation of proceedings in the High Court and not the subordinate courts, while the inherent jurisdiction
H of the High Court under O 92 r 4 of the RHC cannot be invoked as there are already existing express rules.

He added that para 12 in the Schedule to the Courts of Judicature Act 1964 ('para 12') does not confer power on the High Court to transfer a proceeding from a magistrate's court to a sessions court and vice versa, as
I the summonses were not in the High Court.

Puan Sharifah Noorin Alhabshi and Cik Zairin Dzainal Abidin, both learned counsel for the applicant, argued that this court has the jurisdiction

to make an order of transfer and consolidation, as this application was made pursuant to the instruction of the learned Chief Judge. They relied on para 12.

In my judgment, I do not find the aforesaid submissions based on s 66 of the SCA 1948, O 8 r 18(1) and O 47 of the SCR, to be of any assistance to the respondent.

The pertinent provisions which call for consideration and determination herein are to be found in the Schedule to the Courts of Judicature Act 1964 ('CJA 1964') which sets out the additional powers of the High Court.

Transfer of proceedings has been expressly provided for in para 12 which merits reproduction as follows:

> 12 Transfer of proceedings.
> Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:
>
> Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.

Paragraph 12 came up for judicial consideration by Augustine Paul J in *Malacca Securities Sdn Bhd v Loke Yu* [1999] 6 MLJ 112 where the question for decision revolved around 'the power of a branch High Court to transfer a proceeding pending before it to another branch High Court.' The facts in that case revealed that the plaintiff was a licensed stockbroker with its registered office in Melaka while the defendant's last known address was in Kuala Lumpur. The defendant applied for but failed to obtain an order to transfer his case to the High Court of Malaya in Kuala Lumpur. In relation to para 12, the learned judge held at p 122 as follows:

> (1) That the word 'Court' in the phrase 'Power to transfer any proceeding to any other Court' goes beyond the two High Courts viz the High Court of Malaya and the High Court of Sabah and Sarawak.
>
> (2) That the power given to transfer any proceeding is only from a High Court 'to' any High Court and not 'from' any other High Court to itself.
>
> (3) That the exercise of the power conferred by para 12 to transfer a proceeding to any other court in the light of the proviso to it shall be exercised in such manner as may be prescribed by rules of court and that the rules contemplated by the proviso constitute a condition precedent to the exercise of the power conferred by para 12.

It is necessary to observe that in so far as para 12 is concerned, the focus of the judgment was in respect of the transfer of proceedings from a High Court to another High Court of co-ordinate jurisdiction.

In *Amanah Finance Malaysia Berhad v Aura Vista Sdn Bhd & Ors* [2000] 5 CLJ 229, the plaintiff filed a writ of summons against the defendants in Kuala Lumpur High Court. The second and third defendants applied for the writ to be transferred to the Penang High Court. Abdul Wahab Patail J referred to para 12 and agreed with the reasoning of Augustine Paul J in *Malacca Securities*, that the proviso thereto is a condition precedent to the exercise of the power under that paragraph, thereby

holding that a branch of the High Court cannot exercise the power to transfer any case to another branch of the High Court unless the requisite rules have been made.

In these two judgments, the respective learned judges alluded to the alternative remedy of the defendants to make an application to the learned Chief Judge under s 20 of the CJA 1964 regulating the distribution of business among the Judges of the High Court in accordance with such directions as may be given by the learned Chief Judge.

As the applicant before me has indeed applied to the learned Chief Judge for an order of transfer, and has been directed to apply to this High Court, the learned Chief Judge must have contemplated that this court has the jurisdiction which is unlimited: *Scotch Leasing Sdn Bhd (In receivership) v Chee Pok Choy & Ors* [1997] 2 MLJ 105, as referred to in *Malacca Securities*.

In my view, the jurisdiction of the High Court in making an order of transfer and consolidation of proceedings in subordinate courts has been expressly provided for in para 12, particularly the words, '*Power to transfer any proceedings* ... to or from any subordinate court, and in the case of transfer to or from a subordinate court to give *any directions as to the further conduct thereof*'. (Emphasis added.)

There is no doubt in my mind that the words 'any proceedings' in para 12 are sufficiently wide to cover the power to order the transfer of the following proceedings:

(a) from the High Court to any subordinate court and vice versa;

(b) from any sessions court to any sessions court and vice versa; and

(c) from any sessions court to any magistrate's court and vice versa;

I agree with the judgment of Mohd Hishamuddin J in *Kee Chai Heng v Ketua Polis Daerah Kuala Muda & Anor* [1999] 2 MLJ 668 that under para 12 only the High Court has the power to transfer a civil case from a sessions court to a magistrate's court and vice versa.

In *Malacca Securities*, Augustine Paul J also observed that the language employed in para 12 itself in the case of transfer of proceedings in the subordinate courts is widely worded to authorize transfer 'to or from any subordinate court';

As the proviso to para 12 says that this power of transfer shall be exercised in such manner as may be prescribed by any rules of court, it is necessary to explore the existence of such rule or rules. Order 47 r 5(1) and (2) of the SCR comes to mind immediately and where relevant, is reproduced as follows:

> 5(1) Where by an order of the High Court any proceedings are ordered to be transferred to a Sessions Court, ... the registrar must, on receipt of the order or certified copies thereof, enter proceedings in the appropriate Book, and give notice in Form 138, at least 14 days before the return day, to every party to appear before the court for such directions as to the further conduct of the proceedings.

(2) Subject to any directions contained in the order of the High Court, the trial shall proceed as if the proceedings had commenced in a Sessions Court.

In my view, the provisions under O 47 r 5(1) and (2) of the SCR contain the necessary procedural mechanism for the purposes of effecting the transfer of civil cases from a sessions court to a magistrate's court and vice versa under the High Court's substantive power in para 12.

Next, the jurisdiction of the High Court to order a consolidation is clearly manifested in the words 'to give any directions as to further conduct thereof' in para 12 and such a power coincides with the procedural rule expressed in O 47 r 5(2) of the SCR which envisages any directions contained in the order of the High Court.

Further, O 4 r 1(1) of the RHC and O 8 r 18(1) of the SCR contain equipollent provisions regulating the respective procedure in the High Court and the subordinate courts to order consolidation, in the following words:

1 Consolidation, etc of causes or matters (O 4 r 1)

(1) Where two or more causes or matters are pending, then, if it appears to the court:

(a) that some common question of law or fact arises in both or all of them; or

(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or

(c) that for some other reason it is desirable to make an order under this rule

the court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

Order 8 r 18(1) of the SCR contains the additional words 'in the same court' after the word 'pending' in the first line thereof.

Having considered and determined the question of the jurisdiction of the High Court in respect of a transfer and consolidation and the governing procedure, I shall now consider the merits of the application herein.

Merits

In respect of the merits of the instant application, it was argued for the respondent that the applicant's attempt to amend the defence by including a counterclaim and set-off in the magistrate's court summons has been dismissed with costs by the learned magistrate and there was no appeal against that dismissal.

It was also contended for the respondent that the application for transfer and consolidation would undermine the decision of the learned magistrate who has dismissed the applicant's application for the proposed amendment to include the counterclaim.

A The respondent then submitted that in the magistrate's court summons, the applicant is the defendant while in the sessions court summons, the applicant is the plaintiff, as a result of which on the authority of *Syarikat Multi Wood (a firm) v Foosan Timber Industries Sdn Bhd & Anor* [1992] 4 CLJ 1915, there could be no consolidation.

B For the applicant, it was stressed that the aforesaid grounds in support of the instant application are sufficient for the purposes of enabling the court to order a consolidation.

On my part, it is pertinent to observe that the two summonses relate to the same unit of condominium as the sole subject matter of litigation and involve common questions of law or fact between the applicant and the C respondent, who are respectively represented by the same firms of solicitors and the witnesses are substantially the same.

The only factor that may militate against consolidation is that there are cross-actions here, and I am mindful of the decision of Chong Siew Fai J (later CJ (SS)) in *Syarikat Multi Wood*, that consolidation is not possible D where the plaintiff in one action is the defendant in the other action. Be that as it may, two other facts in that case are significant viz the plaintiffs in the two actions were represented by different firms of advocates and the defendants in the two actions were also represented by different firms of advocates, which is not the case in the application before me, as the respective solicitors are the same.

E It is vital to observe that there is an instructive passage in the *Malaysian High Court Practice MLJ* [1998] Desk Edn pp 48–58 para 4.1.3 which reads as follows:

> ...; consolidation may, however, be possible in such cases if the court treats one action as an adjunct proceeding, eg the plaintiff could be converted into F a counterclaiming defendant ...

I agree with this passage and hereby apply it to the instant application.

Conclusion

In the light of the foregoing grounds, I allow the application in encl (1) in G the following terms:

(1) the magistrate's court summons is hereby transferred to the sessions court;

(2) the magistrate's court summons is hereby consolidated with the sessions court summons;

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(3) the sessions court summons shall be treated as an adjunct proceeding to the magistrate's court summons, and the applicant being the plaintiff in the sessions court summons shall be converted into a counterclaiming defendant;

(4) the applicant's claim against the respondent in the sessions court I summons shall be proceeded and tried as a counterclaim in the respondent's claim against the applicant in the magistrate's court summons;

(5) upon the transfer and the consolidation, the two summonses shall be heard and disposed of in the same proceeding by the learned sessions court judge; and

(6) costs in the cause.

Application allowed.

Reported by Sivapragasam Kumaran